



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
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Washington, DC 20044

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November 8, 2000

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Lorelei J. Borland
7 Bayberry Road
Elmsford, New York 10523

Re: *United States v. Evcon Indus., Inc., et al.*, Civil Action No. 93-1491-MLB

Dear Ms. Borland:

As we discussed in today's telephone conversation, enclosed are the executed Joint Motion to Modify Consent Decree, proposed Order, and the executed Agreement to Modify Consent Decree in the form to which we have agreed. I will leave it to you to file the enclosed documents.

After the appropriate representative of your clients have signed and filed the documents, I would appreciate it if you would mail a file-stamped copy of each document to me.

Please call me if you would like to discuss anything.

Sincerely,

Wayne T. Ault

Wayne T. Ault

Enclosures
cc (w/encls.): Belinda L. Holmes

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Superfund

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**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

UNITED STATES OF AMERICA)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 93-1491-MLB
)	
EVCON INDUSTRIES, INC., et al.)	
)	
Defendants.)	
)	

JOINT MOTION TO MODIFY CONSENT DECREE

Settling defendants York International Corporation (successor to Evcon Industries, Inc.), New Coleman Holdings, Inc. and Air Xcel, Inc. (successor to Recreational Vehicle Products, Inc.), and plaintiff United States of America, on behalf of the United States Environmental Protection Agency (EPA) respectfully request that this Court enter an Order modifying the Consent Decree in this case in accordance with the terms of the Agreement to Modify Consent Decree attached to this Motion as Exhibit 1.

This Court entered the Consent Decree in this case on February 18, 1994. The Consent Decree resolved the settling defendants' liability for performance of certain response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, at the Coleman Operable Unit located within the 29th and Mead Superfund Site.

The Settling Defendants have completed a great deal of the work required by the Consent Decree. EPA estimates that financial assurances of \$600,000 would provide adequate funding to

complete the work should defendants fail to perform. Accordingly, the parties have agreed to reduce the amount of required financial assurances from \$1,638, 456 to \$600,000 to reflect these changed circumstances.

CONCLUSION


For the foregoing reasons, this Court should enter an Order modifying the Consent Decree in this case in accordance with the terms of the Agreement to Modify Consent Decree attached to this Motion as Exhibit 1.

Respectfully submitted,

FOR DEFENDANTS YORK INTERNATIONAL
CORPORATION, NEW COLEMAN HOLDINGS, INC.,
AND AIR XCEL, INC.:

CHARLES P. EFFLANDT
Foulston & Siefkin
700 Fourth Financial Center
Wichita, Kansas 67202
Telephone: 914-347-1912

FOR PLAINTIFF, UNITED STATES OF AMERICA:



WAYNE T. AULT
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Post Office Box 7611
Washington, D.C. 20044-7611
Telephone: 202-305-0300

UNITED STATES OF AMERICA)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 93-1491-MLB
)	
EVCON INDUSTRIES, INC., et al.)	
)	
Defendants.)	
)	

On joint motion of all parties to modify the Consent Decree that this Court entered on February 18, 1994, and for good cause shown, effective immediately § XIV of the Consent Decree is modified to reduce the amount of required financial assurances from \$1,638,456 to \$600,000.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA

Plaintiffs,

v.

EVCON INDUSTRIES, INC.,

NEW COLEMAN HOLDINGS, INC.

(formerly known as

The Coleman Company, Inc.),

and

RECREATIONAL VEHICLE

PRODUCTS, INC.

Defendants.

CIVIL ACTION NO.
93-1491-MLB

AGREEMENT TO MODIFY CONSENT DECREE

1. On February 18, 1994, the above-captioned Consent Decree was entered in the District Court of Kansas. The Consent Decree addressed the Settling Defendants' liability for performance of certain response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund"), 42 U.S.C. §§ 9601 *et seq.*, at the Coleman Operable Unit ("COU") located within the former 29th and Mead Superfund Site.

2. Since the entry of the Consent Decree, Evcon Industries, a party to the Consent Decree, has been acquired by York International Corporation ("York"). York is signing this Agreement to Modify Consent Decree ("Agreement") as Evcon's successor. Also since the entry of the Consent Decree, Recreational Vehicle Products, Inc. has been acquired by Air Xcel, Inc. Air Xcel, Inc. is signing this Agreement as the successor to Recreational Vehicle Products, Inc. The parties to this Agreement are the United States and the Settling Defendants. For the purposes of this Agreement, "Settling Defendants" shall mean York International Corporation,

New Coleman Holdings, Inc. and Air Xcel, Inc.

3. Section XIV. Of the COU Consent Decree, "Assurance of Ability to Complete Work", provides:

IV. ASSURANCE OF ABILITY TO COMPLETE WORK

44. Within thirty (30) days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$1,638,456.00 in one of the following forms:

- (a) a surety bond guaranteeing performance of the Work;
- (b) one or more irrevocable letters of credit equaling the total estimated cost of the Work;
- (c) a trust fund;
- (d) a guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or
- (e) a demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

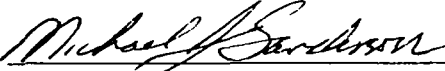
45. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this section are inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse

this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

4. The undersigned parties agree that the amount of the financial assurances required pursuant to Section XIV. of the Consent Decree will be changed from \$1,638,456.00 to \$600,000.00. This new requirement will be effective immediately upon the date of signature of this Agreement by the representative of the United States Department of Justice.

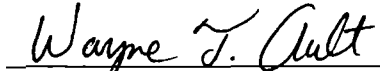
IT IS SO AGREED.

For the United States Environmental Protection Agency, Region VII:


 9-12-00

Michael J. Sanderson
Director, Superfund Division

For the United States Department of Justice:

_____
Wayne Ault, Esq.
Environmental Enforcement Section

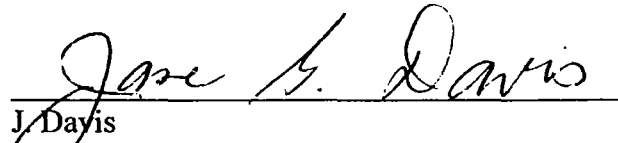
For New Coleman Holdings, Inc.:



Gerry Kessel
Vice President and Assistant Treasurer
New Coleman Holdings Inc.

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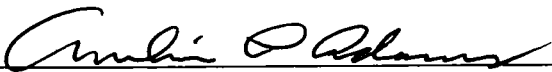
For York International Corporation:

A handwritten signature in cursive script, appearing to read "J. Davis", is written over a horizontal line.

J. Davis
Vice President and General Counsel
York International Corporation

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AIRXCEL, Inc. :
For ~~Air Xcel, Inc.~~



Melvin L. Adams
President, ~~Air Xcel, Inc.~~
AIRXCEL, Inc